

**MINUTES  
HAMPTON ZONING BOARD OF ADJUSTMENT  
THURSDAY, FEBRUARY 24, 2005**

MEMBERS PRESENT: Michael Kennedy, Chairman  
Matt Shaw, Vice Chairman  
William O'Brien, Alternate  
Rick Griffin  
Jennifer Truesdale, Clerk

OTHERS PRESENT: Chuck Marsden, Assistant Building Inspector

The Chairman called the meeting to order at 7:00 p.m. and introduced the members of the Board. He reported that this will be Mr. Griffin's last meeting. He will however, remain on the Board of Selectmen. He told Mr. Griffin the Board appreciated him staying with them when he didn't have to after being elected to the Board of Selectmen.

The continued discussion of the "Order to Vacate" the addition owned by Myrtle Woodward and Barbara Burbank for property located at 292 Winnacunnet Road. Mr. Schultz, the Town Building Inspector posted the property as unsafe for human occupancy. This property is located at Map 206, Lot 33 in a RA Zone.

The Chairman announced that at the last meeting the Building Inspector was asked to conduct a life safety assessment on this property and report back to the Board.

Atty. Jim Merrill, representing Kevin Schultz, and Chuck Marsden, Assistant Building Inspector, came to the podium to speak. Mr. Merrill distributed a copy of Mr. Marsden's report on his inspection dated 2/23/05, which included pictures taken during the inspection. There are still significant life safety issues, he said. The fire rated door and wall have been compromised and there is live wiring within the firewall. He then introduced Mr. Marsden as having been Asst. Building Inspector for 3 years and a contractor for 20 years prior to that.

Mr. Marsden read from his report while referencing the photos as they correspond to the problems he noted. He noted an electrical cable had been added and run through the firewall with calking at one wall, but not at another. This compromised the fire separation. The fire rated, self closing, self latching door doesn't operate properly. It is obstructed by an extension cord that is plugged into an outlet. The door cannot self close or self latch as it was built and installed to do. The weather stripping on both sides and top of the door jar have been removed. This acts as tight seal around the door. The door jam has been modified to make room for the cord. Two areas between the second floor of the addition and the area over the garage have been compromised. The hot water room cannot function as fire separation. This room is not properly vented because of insulation that has been stuffed into a required opening, possibly to stop the pipes from freezing. The areas over the garage in conjunction with the hot water heater room and the venting cause a hazard.

Jim Merrill went on to say that we are here this evening because of unpermitted, unlicensed and uninspected construction. Serious life safety issues exist. Mr. Schultz believes there is a significant threat to safety. He acted reasonably and we ask that you uphold his decision in this matter. He also asks how the owners can use the property based on the Administrative Decision made last week.

Atty. Craig Solomon commented that he is seeing this report for the first time. He too noticed the pictures of the outlets above the garage that weren't commented on by Mr. Marsden. This shows that Ms. Burbank was telling the truth when she said they weren't connected. On the issue of use, which was the subject of the Administrative Appeal, we intend to pursue remedies in court. Our appeal of the Administrative Decision stays that decision until we go through the court process, unless you agree there's eminent life safety issues here, he said. What he's heard, in simplest form, is that a cable was installed without proper calking on one side, weatherstripping has been removed, that should be easy to fix, the fire door is out of plum, that also can be fixed. His client is willing to fix all these issues. The hot water heater room, if he's reading it correctly, is of less

consequence if the fire wall is fixed. The only change he sees here is to remove the insulation in the crawl space. This would entail perhaps 2 hours of work, he figured. This is not significant and eminent, he said.

Mr. Marsden agreed that everything is fixable. And with attention to detail, the firewall and doors could be restored.

The Board discussed allowing Ms. Burbank to make the corrections and have the Building Department reinspect and sign off for approval. No action would be taken today. If all corrections are made, then the Board would permit the use of the addition, but not as a dwelling unit.

Ms. Burbank wanted to know exactly what needs to be done.

Atty. Merrill offered to supply her with a list of issues that need to be resolved. Status quo would be maintained until the Board is satisfied. The Board members agreed.

Atty. Solomon asked to be put on the agenda for March.

Mr. Kennedy said he will direct the scheduler to put this on first next month if the corrections are made and inspected in time.

At this time Mr. O'Brien steps down and Mr. Jack Lessard sits on the Board.

04-05 The petition of 105-107 Kings Highway Real Estate Trust, Ken Sakurai, Trustee for property located at 105, 107, 107A Kings Highway seeking relief from Article 1 (as to Section 1.3), Article 3 (as to Section 3.3), Article 4 (as to Section 4.1.1, 4.5.1 and 4.5.2) to raze and remove existing 2 structures, comprised of 3 units and replace them with 2 new structures joined by a common deck and stairway with one dwelling unit per structure. This is an alteration to a non-conforming use where 2-family dwellings are not permitted in an RZ Zone. The project would not meet the required minimum lot area per dwelling unit, nor would it meet the required front and side setbacks in a RA Zone. This property is located at Map 197, Lot 20 in a RA Zone.

Ken Sakurai and Atty. John Simonds came to the table to speak on the petition.

The Chairman asked the petitioners to advise the Board on what exactly has changed from the latest denied petition so that the Board can determine if this new one is materially different.

Atty. Simonds said he met with the engineer to provide him with this information. The rear setback is now 10.13 feet, previously it was 7 feet, this is now fully compliant. On the left side there is now a 10 foot setback, that previously was 7 feet, now meeting the setback requirement. This changes the ordinances invoked and this is materially different to him. The right and front setbacks will stay the same. The footprint of the rear building is less, the front building is the same. The livable space has decreased, the cubic feet has changed. The parking and separation between buildings on the property has changed. Overhang to overhang between the 2 buildings is reduced from 8 feet to 4. Impervious surface is reduced. The green strip has increased, landscaping has been added. The non-beach side dormers have been removed. We've changed anything possible. These changes are between the January 2004 petition and tonight's petition.

The Board discussed whether there were material changes from the petition that was denied in Jan. '04. Atty. Simonds proposed a definition to the Board of "material change" from NH Practice Series, pg. 271, sect. 21.18. In short the question should be the nature and degree of the changes.

Mr. Griffin MOVED TO HEAR the petition, SECONDED by Ms. Truesdale.

VOTE: 5 UNANIMOUS

MOTION GRANTED.

Atty. Simonds commented that he has submitted his entire proposal in writing. It is in the Board's packets and therefore he won't spend time reading through it. He did, however, want to allow Mr. Sakurai to speak.

Mr. Sakurai displayed a map showing First Street to Eighteenth Street and Ocean Boulevard and both sides of Kings Highway. He highlighted his property and stated that everything in that area between Kings Highway and

Ocean Boulevard is in the RA Zone. This area used to be RB. In the mid 1980's this zoning change occurred and it eliminated any hope for any serious multi-family use in the area. This also made every property non-conforming. He's not that different from his neighbors, he said. He displayed another map showing his property and all other multi-family, 2 structure properties in the area. And multi-family lots. He's requesting to completely update his legal, non-conforming use to improve the lot. He's not asking for special treatment in any way.

*Discussion of the Board:*

Mr. Shaw stated that 15,000 square feet per unit is required. He needs 30,000 s.f. and he has 4000.

Mr. Kennedy thinks his lot is 5000 s.f.

Atty. Simonds said Mr. Sakurai has a vested interest in the 2 units. He's not asking for a variance for that.

Mr. Kennedy reported he has c.o.'s for 3 units.

Mr. Sakurai explained that he designed the parking to go underneath the buildings leaving more open space. This is a major improvement to life safety. Fire trucks can pull into the front yard to get to the buildings behind him.

Atty. Simonds commented that it's questionable whether he could lift the buildings and repair them. We don't think it's feasible.

Mr. Shaw said that with a single family he would need 20 feet in the front, 10 feet in the rear and 10 feet on the sides.

Mr. Kennedy thinks he can build a 70x30 building without a variance.

Mr. Shaw says 29x70 would be a fairly substantial building.

Mr. Sakurai said he's done a feasibility study on both situations; i.e. 1 building with 2 units vs. 2 separate units. There is a difference.

Atty. Simonds argues that with Boccia economics are entirely relevant.

*Comments from the Audience:*

Jack Saldi, Twelfth Street, said he's speaking for 40 residents and property owners who signed his petition opposing 2 or more dwelling units on this 50 x 80 lot in the RA Zone. This will negatively impact the neighborhood. DPW allows 24 foot curb cuts. The plan show 40 feet. Two units are allowed 2 -12 foot driveways, he said. He can build a nice single family house.

Bill O'Brien, 6 Twelfth Street, said he's a few hundred feet from the petitioner. He read a letter from Fred Schaaque who couldn't make it this evening. He is opposing the petition asking for single family only. Also noting that the petitioner is doing this for economic purposes only. For himself he spoke of the 5 criteria necessary for granting a petition. He noted if one isn't met, the petition can't be granted. This property is contrary to the public interest and is not unique. Thirteen homeowners have replaced their structures with single family structures. This has strengthened the integrity of the RA Zone. If this is allowed it would change the new construction, single family character of the neighborhood. Two homes on 3 levels is unreasonable on this very small lot. He requests that the Board preserve the single family areas of Town and deny this petition.

Ms. Truesdale read into the record a letter from Jack Gale, 11 Ninth Street, opposing the petition. Stating that this is the 7<sup>th</sup> petition for this 4000 square foot lot. The buildings are way too large. The RA Zone is for single family only.

Atty. Simonds commented that there have been 4 people speak or submit letters opposing the petition.

Mr. O'Brien corrected him saying that 1 of the people spoke for 40 people.

Mr. Simonds went on to say that this is a dramatic improvement over what exists now. The Boccia case says economic issues are to be considered. The very first sentence of the Hampton Zoning Ordinance says "in order to preserve and improve the attractiveness of the Town of Hampton as a resort community". Seventh to Thirteenth Street is not the neighborhood, he said. The neighborhood is from Kennedy's down to Winnacunnet Road. His client has vested rights. Three units are pre-existing. There would be no purpose for this Board if variances weren't granted. Your very purpose is to exercise discretion. This Board is made up of people who live in and understand the community.

Mr. Sakurai added that he believes everyone can recall at a prior hearing that he had maybe 100 people in favor of his petition. That's a lot more than 41. No one on that petition is an abutter to him. Every single abutter was in favor of his 2 buildings except for Mr. Kanteres. He personally had a conversation with Mr. Kanteres and he said he was in favor. So, every one of his abutters are in favor. They are the people who are most effected. Anyone's rights that should be important, outside of his, would be his abutters, he said.

Mr. Saldi said his petition is all residents and owners, Mr. Sakurai's petition was mostly renters.

*Back to the Board:*

Ms. Truesdale feels that 3 units to 2 units is an improvement.

Mr. Griffin reported that he has received a lot of calls on this petition. The people in the neighborhood are pretty passionate about the zoning being enforced for single family homes.

Mr. Lessard still thinks he can build a beautiful single family there.

Mr. Shaw said this is small lot. The lot area per dwelling unit is an astronomical difference.

Mr. Kennedy reminded that they already have the right for 2 units. They're not asking for that. The question is do they have the right to expand. To raze and reconstruct is considered expansion.

Atty. Simonds reminded that the foot print is shrinking. Mr. Sakurai reminded that the number of units is decreasing and the number of occupants. The main concern should be his immediate abutters.

Mr. Griffin thinks you can facilitate more people in a bigger space.

Atty. Simonds argued that that is hard to measure but if you have 2 -2 bedrooms units, you'd probably have a husband and wife in 1 bedroom and a child in the other in each unit, that would make six. If you have a 4 bedroom house, with husband and wife in 1 bedroom, 1 child in each of 2 bedrooms and an office in the fourth bedroom, that makes 4. This is the way things play out. You can stuff 8 people in a Volkswagon Beetle, he said.

Discussion followed on how certificate's of occupancy work. There could be one person allowed on a pull-out couch in the living room, if there's enough living area.

The Chairman asked how can he determine that you can't meet your desired outcome with 2 units in 1 building like the next petition? You could probably do that kind of building with very few variances, he said. With Boccia's requirements, this would be a less intrusive way to do this.

Atty. Simonds said these are two entirely different conceptually different applications. The second one shouldn't be considered at this time.

Mr. Sakurai said there is a significant amount of value difference putting the 2 units into 1 building.

The Chairman felt that 2 units in 1 building overall would cost less. What's the burden overall. Is the benefit sought by the applicant a reasonable financial return? Two units in two buildings vs. 3 units in 1 building, 2 different benefits. He's not sure financial benefit is part of it.

Atty. Simonds said he's not sure the Superior Court feels the ZBA should be financial advisors.

Mr. Lessard MOVED TO DENY the petition because it's too much for the lot, SECONDED by Mr. Griffin.

VOTE: 3 FOR -1 OPPO(JT) -1 ABST (MK)

PETITION DENIED.

A 2 minutes break was taken at this time.

05-05 The petition of 105-107 Kings Highway Real Estate Trust, Ken Sakurai, Trustee for property located at 105, 107, 107A Kings Highway seeking relief from Article 1 (as to Section 1.3), Article 3 (as to Section 3.8), Article 4 (as to Sections 4.1.1, 4.5.1 and 4.5.3) and Article 8 (as to Sections 8.2.1, 8.2.2, 8.2.3, 8.2.5 and 8.2.6) to raze and remove existing 2 structures, comprised of 3 units and replace them with 1 new structure with 3 units. This is an alteration to a non-conforming use where multi-family dwellings are not permitted in a RA Zone. This project would not meet the required minimum lot area per dwelling unit, nor would it meet the required front, side and rear setbacks in a RA Zone. It would also not provide the minimum required recreation area, minimum frontage, required spacing between structures, driveways and parking areas or the minimum required buffer along boundaries. This property is located at Map 197, Lot 20 in a RA Zone.

The Chairman asked everyone to keep their statements concise. The property does currently have 3 units.

Atty. Simonds said this proposal is different. It will put the 3 current units into 1 building. There is a typographical error on the plans. The rear setback is 7 feet and the building is 15.8' to the next building to the rear right, 16.1 feet to the rear left building. In the front it should show 21.9' on the right and 9.2 feet on the left. Again his case is in writing with the petition and he would like to let Mr. Sakurai speak.

Mr. Sakurai said this proposal is a single building plan to simulate the single structure setup that seems to appeal to some of the neighbors in the area. On the right side the parking sticks out of the building a little bit. The first floor basement area is open.

Atty. Simonds added that the Article 8 provisions are added for this petition.

Mr. Sakurai went on to say that this footprint is not unlike a lot of the other renovated footprints in the area that Mr. O'Brien spoke about that maximized their footprints.

*Comments from the Audience:*

Jack Saldi, Twelfth St, restates his petition of 40 people wanting only a single family home on the property.

The Chairman asked if a single family home were built of this size would he agree to that. He said no, he still thinks this is an overuse of the property.

Bill O'Brien, 6 Twelfth Street, said he has the same concerns as the last petition. He only received 1 variance when he built his house. The average amount of variances with the 13 homes that have been rebuilt is .69 per petition.

Mr. Sakurai thought he had received more variances. Mr. O'Brien said he tried for more but only received the one.

*Back to the Board:*

Ms. Truesdale thinks 2 units would be nicer.

Mr. Shaw asks why they need a variance for 3.8 if they have 3 legal units.

Atty. Simonds said the practical answer is that the Building Inspector required it.

Mr. Shaw feels it's too much for the lot.

Mr. Shaw MOVED TO DENY the petition because the expansion is too intense for the site, SECONDED by Mr. Lessard.

VOTE: 3 FOR -1 OPPO (JT) -1 ABST (MK)

PETITION DENIED.

06-05 The petition of George Snow, through David Snow, for property located at 34 Mill Pond Lane seeking relief from Article 3.8, 4.1.1, 8.2.2 and 8.2.3 to construct 6 single family dwelling to be held in condominium ownership with the existing dwelling. Multi-family dwellings are prohibited in the RA Zone and allowed in the RB Zone with site plan/subdivision review. 15,000 sq. feet per unit is required in the RA Zone and 7,500 sq. feet in the RB Zone. This project does not have the required 100 foot frontage on a public street or the required 40 foot setback from one of the boundaries. This property is located at Map 150, Lot 2 in a RB/RA Zone.

No one was present for this petition. They will need to re-apply.

07-05 The petition of Lewis Irrevocable Trust, through option holder Brian Hayes, for property located at 486 Winnacunnet Road seeking relief from Articles 4.1.1, 8.2.1, 8.2.4 and 8.2.6 to replace existing residence with a six (6) unit residential condominium. This property is located at Map 222, Lot 82 in a RB Zone.

Atty. Steve Ells and Brian Hayes came to the table to speak on the petition. Mr. Ells reported that Mr. Hayes would like to remove the single family home and garage on the property and build a 6 unit condominium on the site. With access from the rear at Surf Street, a paper street off Bonair Avenue. There are 9 deeded lots of 20 x 80 that make up this 13, 196 square foot lot. The building will be 35 feet high with parking under. Mr. Ells distributed to the Board elevation plans of the proposal, stating that the garages will be moved to the back of the building and will be on the Surf Street side. He then read through the 5 criteria as submitted with his petition.

*Questions from the Board:*

Mr. O'Brien asked him to clarify that the side setback is 6 feet. Mr. Ells agreed. Then Mr. O'Brien said he believes he needs a variance from 4.5.2. The Board and the petitioners discussed the need for this additional variance and the need for the petitioners to reapply. Mr. Hayes said there will be no access to the property on the Winnacunnet Road side. Mr. Kennedy feels they will also need a variance for road frontage because their frontage will be on Surf Street and they need 75 feet. He added he would recommend that they try to meet the RB setbacks when they return.

Mr. Lessard MOVED to adjourn the meeting at 10:30 p.m., SECONDED by Mr. Shaw.

VOTE: 5 UNANIMOUS

MEETING ADJOURNED.

**BUSINESS MEETING:**

The Board discussed a request from Peter Saari requesting an extension on a variance granted on January 23, 2003 at 488 High Street. Mr. Kennedy reported that under our ordinance this is required before the variance expires. Procedures won't allow it and the law won't allow us to waive it. The Chairman asked the Board to approve a letter he drafted to Mr. Saari regarding the matter. They agreed.

The meeting was adjourned at 11:30 p.m.

Respectfully submitted,

Angela Boucher,  
Recording Secretary